

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re : Chapter 11  
  
**BYRAM CONCRETE & SUPPLY, INC.,** : Lead Case No. 09-22037 (ASH)  
Debtor. :  
-----X

**OPPOSITION BY ASHBY FUEL OIL CORP. (CREDITOR)  
TO APPLICATION BY DEBTOR TO REDUCE DEBT/CLAIM**

State of New York }  
County of Westchester } ss.:

**TERESA SCUDIERI**, being duly sworn deposes and says:

1. I am the Vice-President and Accounts Receivables Manager of ASHBY FUEL OIL CORP. ("ASHBY"), a Creditor of the Debtor herein, as such am fully familiar with the facts and circumstances hereof, and submit this Affidavit in Opposition to the relief sought by the Debtor vis-a-vis a reduction of ASHBY's claim herein.

2. ASHBY is engaged in the business of supply and sale of fuel oil to the construction industry. ASHBY delivers fuel oil to construction sites, or to contractor's yards for use in various equipment and vehicles relative to construction projects throughout the N. Y. C. metropolitan area.

3. The contention that ASHBY's claim against the Debtor is improper and exaggerated and, therefore, must be reduced, is completely frivolous and without merit. That the Debtor's "books and records" reflect a different amount due and owing ASHBY as set forth in the application before this Court is not dispositive of said application.

4. That the Debtor filed its bankruptcy petition on January 12, 2009, and the instant application claims in Paragraph 15 thereof that as of said date, the sum of \$237,027.90 was due ASHBY. However, the Rule 1007-2 Declaration of the Debtor's President dated January 12, 2009, states that its records reflect the debt to be \$192,767.13. Does the Debtor merely change its records when circumstances dictate same ??

5. Furthermore, the argument that ASHBY failed to credit the Debtor with a credit relative to a UW Marx, Inc. payment on or about March 13, 2009, and is charging unjustified late charges is also false. Attached to ASHBY's Notice of Claim is the account statement of Debtor which supports the claim. On the 3rd page of said attachment, the statement shows a "current" balance of "-\$2,800.00". Same reflects the credit for the exact sum of \$2,800.00 paid to ASHBY on March 24, 2009. (see **Exhibit "A"** hereto)

6. In addition, the contractual agreement between ASHBY and the Debtor provided for the payment of late fees and finance charges on all unpaid balances. That the Debtor never paid said sum in the past is false. Attached hereto as **Exhibit "B"** are

sample copies of the Debtor's account history from 2004 through 2008. Same reflects the charges for late payment and the payment of same by the Debtor in the past. Same reflects the contractual agreement between the parties and supports the fact that the Debtor's contention to the contrary is false.

7. By virtue of the above, the request made by the Debtor should be denied. It has misrepresented the fact of the amount of its indebtedness to ASHBY, has misrepresented the fact regarding the credit heretobefore given to the Debtor, and has misrepresented the fact of the contractual obligation to pay late fees, etc. and that same have been paid in the past. While the purpose of a bankruptcy filing may be to assist a debtor in distress, it should not be utilized by a debtor to manipulate its obligations.

**WHEREFORE**, it is requested that the Order sought by the Debtor be denied.



TERESA SCUDIERI

Sworn to before me this  
20<sup>th</sup> day of January, 2010



PAUL W. MEYER, JR.  
NOTARY PUBLIC, State of N.Y.  
No. 03-4/1301  
Qualified in Bronx County  
Term Expires September 30, 2013

#:000215 -

## INVOICE HISTORY

Date : 04/09/09

:CONS

Page : 1

Date:08/31/04

Company: 01

----- SHIP TO -----

----- BILL TO -----

BYRAM READY MIX

BYRAM READY MIX

@@@MACQUESTION PARKWAY@@@

56 LAFAYETTE AVENUE

\*\*CLEAR ULTRA LOW DSL TANK\*\*

SUITE 310

MT.VERNON, NY

WHITE PLAINS, NY 10603-

Salesrep:H

Home Phone: 914-

Delivery: ANTHONY CELL# 879-3513

Bus. Phone: 914-289-0357 Instruct \*\*\*DO NOT FILL FRONT COMPARTMENT\*\*\*

## BILLING INFORMATION

Cash/Credit

Terms: 0.00 \$ 0 day / Net 60

Tax Code Fuel: 02

Svc : 02

Finance Charge: Y

Current: -2800.00

Over 30: 112.09

60: 110.43

90: 583.38

120: 6778.84

Balance: 4784.74

Statement: 02/28/09

Credit : 2000.00

Last 2800.00

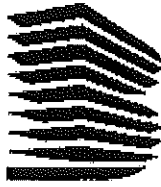
Payment : 03/30/09

Date	Inv. #		Charges	Credits	Adjust.	Balance
				Last Years Balance		0.00
		Sub-Account: 000215 -E				
10/30/08	7655	Fuel Delivery	155.46	12.70	0.00	142.76
10/31/08	7003	Late Pay Charge	58.25	0.00	0.00	58.25
		Sub-Account: 000215 -E				
11/03/08	7846	Fuel Delivery	273.25	0.00	0.00	273.25
		Sub-Account: 000215 -E				
11/06/08	8047	Fuel Delivery	202.18	0.00	0.00	202.18
		Sub-Account: 000215 -E				
11/10/08	8250	Fuel Delivery	293.11	0.00	0.00	293.11
		Sub-Account: 000215 -E				
11/13/08	14376	Fuel Delivery	371.30	0.00	0.00	371.30
		Sub-Account: 000215 -E				
11/17/08	8761	Fuel Delivery	248.05	0.00	0.00	248.05
		Sub-Account: 000215 -E				
11/20/08	9020	Fuel Delivery	312.60	0.00	0.00	312.60
		Sub-Account: 000215 -NT				
11/21/08	9233	Fuel Delivery	575.54	0.00	0.00	575.54
		Sub-Account: 000215 -H				
11/21/08	9234	Fuel Delivery	916.02	0.00	0.00	916.02
		Sub-Account: 000215 -E				
11/24/08	200138	Fuel Delivery	131.53	0.00	0.00	131.53
11/30/08	7072	Late Pay Charge	64.14	0.00	0.00	64.14
		Sub-Account: 000215 -E				
12/01/08	9608	Fuel Delivery	390.11	0.00	0.00	390.11
		Sub-Account: 000215 -NT				
12/03/08	9849	Fuel Delivery	165.28	0.00	0.00	165.28
		Sub-Account: 000215 -E				
12/04/08	9957	Fuel Delivery	42.66	0.00	0.00	42.66

EXHIBIT

tabbies

A



BYRAM  
Concrete & Supply Inc.

Ashby Fuel Oil Corporation  
99 Beechwood Avenue  
New Rochelle, NY 10801

March 24, 2009

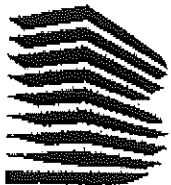
Maureen,

Enclosed please find our payment, in the amount of \$2800., to be applied toward fuel surcharges owed on this past November's Carmody Contracting/Ridge Hill project.

Any questions, please do not hesitate to call.

Regards,

Martha A. Watson  
Accounts Payable



BYRAM  
Concrete  
& Supply Inc. D.B.P.  
56 Lafayette Avenue, Suite 310  
White Plains, NY 10603

**citibank**  
1-8/210

10260

DATE: 3.24.9

AMOUNT: \$ 2,800.00

PAY TO THE ORDER OF:

*two thousand eight hundred and 00/100*  
*Ashby Fuel Oil Corp.*

⑈010260⑈ ⑆021000089⑆ 9947147997⑈

# Memorandum

Teresa Scudieri

**Re:** Byram Finance Charges

Attached you will find the finance charges and payments for Byram

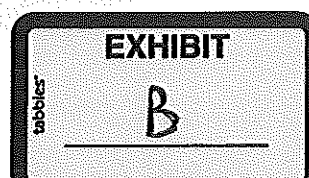
I just took a sample of years 2004 through 2008.

Highlighted in yellow are the Finance Charges (Late Pay Charge).

Highlighted in Pink are the payments.

ASHLEY FUEL OIL CORP  
(914) 576-0009 OFFICE

69 BEECHWOOD AVENUE  
NEW ROCHELLE NEW YORK 10801



ASHBY FUEL OIL CORP.  
99 Beechwood Ave  
New Rochelle NY 10801

PHONE: (914)576-0009

DATE: 01/19/2010

ASHBY FUEL OIL CORP.  
CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

BYRAM READY MIX  
56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603--

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 1

DATE	INV #	CHARGES AND CREDITS	AMOUNT
		Balance Forward	25974.01
11/30/04	3563	Late Pay Charge <i>Paid 2/30/05</i>	221.56 /
		Total Late Pay \$	221.56
		Current Bal. \$	26195.57

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PAGE : 1

DATE	INV #	CHARGES AND CREDITS	AMOUNT
		Balance Forward	24582.80
03/30/05	3563	Payment CK 2178 \$7108.08	-221.56
03/30/05	59854	Payment CK 2178 \$7108.08	-214.39
03/30/05	168148	Payment CK 2178 \$7108.08	-2048.25
03/30/05	168168	Payment CK 2178 \$7108.08	-1596.60
03/30/05	168169	Payment CK 2178 \$7108.08	-985.95
03/30/05	168170	Payment CK 2178 \$7108.08	-1153.45
03/30/05	171395	Payment CK 2178 \$7108.08	-887.88
		Total Payments \$	7108.08
		Current Bal. \$	17474.72



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PAGE : 1

DATE	INV #	CHARGES AND CREDITS	AMOUNT
		Balance Forward	44604.04
06/30/05	4279	Late Pay Charge <i>Paid 7/9/05</i>	493.27 ✓
		Total Late Pay \$	493.27
		Current Bal. \$	45097.31

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PAGE : 1

DATE	INV #	CHARGES AND CREDITS	AMOUNT
		Balance Forward	58442.63
09/09/05	4025	Payment CK 2479 \$7586.81	-3690.69
09/09/05	<del>4279</del>	Payment CK 2479 \$7586.81	<del>493.27</del>
09/09/05	4642	Payment CK 2479 \$7586.81	-3402.85
		Total Payments \$	7586.81
		Current Bal. \$	50855.82

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PAGE : 1

DATE	INV #	CHARGES AND CREDITS	AMOUNT
		Balance Forward	83801.40
03/31/06	5061	Late Pay Charge <i>paid 6/15/06</i>	1155.29 ✓
		Total Late Pay \$	1155.29
		Current Bal. \$	84956.69

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RE: BYRAM READY MIX  
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PAGE : 1

DATE	INV #	CHARGES AND CREDITS				AMOUNT
					Balance Forward	98412.42
06/15/06	<del>5061</del>	Payment	CK	3130	\$30301.10	<del>-1155.29</del> ✓
06/15/06	13765	Payment	CK	3130	\$30301.10	-442.47
06/15/06	17346	Payment	CK	3130	\$30301.10	-787.22
06/15/06	17347	Payment	CK	3130	\$30301.10	-2695.53
06/15/06	17715	Payment	CK	3130	\$30301.10	-5715.46
06/15/06	21648	Payment	CK	3130	\$30301.10	-238.99
06/15/06	21954	Payment	CK	3130	\$30301.10	-1420.53
06/15/06	24704	Payment	CK	3130	\$30301.10	-1386.31
06/15/06	26335	Payment	CK	3130	\$30301.10	-1119.70
06/15/06	175027	Payment	CK	3130	\$30301.10	-3141.20
06/15/06	178369	Payment	CK	3130	\$30301.10	-6106.71
06/15/06	183090	Payment	CK	3130	\$30301.10	-283.86
06/15/06	183091	Payment	CK	3130	\$30301.10	-848.62
06/15/06	183137	Payment	CK	3130	\$30301.10	-585.45
06/15/06	183176	Payment	CK	3130	\$30301.10	-254.92
06/15/06	183195	Payment	CK	3130	\$30301.10	-4118.84
					Total Payments \$	30301.10
					Current Bal. \$	68111.32

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RE: BYRAM READY MIX  
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PAGE : 1

DATE	INV #	CHARGES AND CREDITS	AMOUNT
		Balance Forward	94045.92
09/30/06	5359	Late Pay Charge	1254.79
		Total Late Pay \$	1254.79
		Current Bal. \$	95300.71

*Paid 12/14/06*

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RE: BYRAM READY MIX  
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PAGE : 1

DATE	INV #	CHARGES AND CREDITS	AMOUNT
		Balance Forward	84952.93
12/14/06	<del>5359</del>	Payment CK #3494 \$24991.52	<del>1254.79</del>
12/14/06	27207	Payment CK #3494 \$24991.52	-4120.23
12/14/06	36796	Payment CK #3494 \$24991.52	-3252.38
	000215	-NT BYRAM READY MI ***HOPPER TANK***	
12/14/06	54003	#2NT DSL TAX EXEMPT 369.4 gals @ 1.9830	732.52
12/14/06	54008	#CUL CLEAR ULTRA LOW 2328.8 gals @ 2.1180	4932.40
		PBT (LS)	329.53
		Fed Excise Tax	568.23
		LUST	233.21
		State Excise Tax	186.30
			6249.67
12/14/06	176468	Payment CK #3494 \$24991.52	-2904.34
12/14/06	184893	Payment CK #3494 \$24991.52	-4534.74
12/14/06	185721	Payment CK #3494 \$24991.52	-5231.19
12/14/06	185738	Payment CK #3494 \$24991.52	-3693.85
		Total Fuel	\$ 5664.92
		Total Tax	\$ 1317.27
		Total Payments	\$ 24991.52
		Current Bal.	\$ 66943.60

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PAGE : 1

DATE	INV #	CHARGES AND CREDITS	AMOUNT
		Balance Forward	106752.32
04/30/07	5823	Late Pay Charge	1401.22
		Total Late Pay \$	1401.22
		Current Bal. \$	108153.54

*Paris 1/19/07*

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RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 1

DATE	INV #	CHARGES AND CREDITS				AMOUNT
		Balance Forward				67513.29
07/09/07	<del>5823</del>	Payment	CK	1007	\$10893.14	<del>1401.22</del> ✓
07/09/07	46190	Payment	CK	1007	\$10893.14	-1228.56
07/09/07	185634	Payment	CK	1007	\$10893.14	-4368.55
07/09/07	188851	Payment	CK	1007	\$10893.14	-3894.81
07/09/07	193496	#CUT CUL TANK			2267.8 gals @ 2.4875	5641.15
		PBT (LS)				336.77
		Fed Excise Tax				553.34
		LUST				261.25
		State Excise Tax				181.42
		State Sales Tax				198.43
						7172.36
		Total Fuel			\$	5641.15
		Total Tax			\$	1531.21
		Total Payments			\$	10893.14
		Current Bal.			\$	63792.51



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PAGE : 1

DATE	INV #	CHARGES AND CREDITS	AMOUNT
10/31/07	6493	Late Pay Charge <i>Plus 11/10/08</i>	Balance Forward 63446.51 1080.61 ✓
			Total Late Pay \$ 1080.61
			Current Bal. \$ 64527.12

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PAGE : 1

DATE	INV #	CHARGES AND CREDITS	AMOUNT
		Balance Forward	89207.47
01/11/08	<del>6493</del>	Payment CK 1348 \$19764.42	<del>1080.61</del>
	000215	-NT BYRAM READY MI ***HOPPER TANK***	
01/11/08	25264	#2NT Del. Tax Exempt 537.7 gals @ 2.9540	1588.37
01/11/08	29810	Payment CK 1348 \$19764.42	-5469.98
01/11/08	58827	Payment CK 1348 \$19764.42	-339.28
01/11/08	65496	Payment CK 1348 \$19764.42	-390.68
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
01/11/08	82884	#RUL RED ULTRA LOW 66.6 gals @ 3.5570	236.90
		PBT (HS)	9.89
		LUST	9.87
		State Excise Tax	5.33
		State Sales Tax	5.83
			267.82
01/11/08	172311	Payment CK 1348 \$19764.42	-5534.49
01/11/08	194181	Payment CK 1336 \$4249.70	-2745.23
01/11/08	194186	Payment CK 1348 \$19764.42	-6949.38
01/11/08	194221	Payment CK 1336 \$4249.70	-1504.47
		Total Fuel	\$ 1825.27
		Total Tax	\$ 30.92
		Total Payments	\$ 24014.12
		Current Bal.	\$ 67049.54

ASHBY FUEL OIL CORP.  
99 Beechwood Ave  
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PHONE: (914)576-0009

DATE: 01/18/2010

ASHBY FUEL OIL CORP.  
CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

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56 LAFAYETTE AVENUE  
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DATE	INV #	CHARGES AND CREDITS	AMOUNT
01/29/08	71296	#2C Htg. Oil Comm 131.2 gals @ 2.8350	371.95
		PBT (Htg Comm)	6.04
		State Sales Tax(Com)	15.12
		State Sales Tax	11.48
			404.59
01/31/08	6646	Late Pay Charge	1255.47
01/31/08	34462	#CUL CLEAR ULTRA LOW 412.6 gals @ 2.9400	1213.04
		PBT (LS)	61.27
		Fed Excise Tax	100.67
		LUST	55.00
		State Excise Tax	33.01
			1462.99
02/01/08	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
	71605	#RUL RED ULTRA LOW 47.9 gals @ 3.4880	167.08
		PBT (HS)	7.02
		LUST	6.96
		State Excise Tax	3.83
		State Sales Tax	4.19
			189.08
02/04/08	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
	68793	#RUL RED ULTRA LOW 108.1 gals @ 3.4580	373.81
		PBT (HS)	15.84
		LUST	15.59
		State Excise Tax	8.65
		State Sales Tax	9.46
			423.35

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DATE	INV #	CHARGES AND CREDITS	AMOUNT
05/23/08	000215 87900	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #RUL RED ULTRA LOW 19.3 gals @ 5.0480 PBT (HS) LUST State Excise Tax State Sales Tax	97.43 2.83 4.01 1.54 1.69 107.50
05/28/08	000215 87407	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #RUL RED ULTRA LOW 20.1 gals @ 4.8810 PBT (HS) LUST State Excise Tax State Sales Tax	98.11 2.94 4.04 1.61 1.76 108.46
05/30/08	6646	Payment CK 2660 \$5259.68	-1255.47
05/30/08	34462	Payment CK 2660 \$5259.68	-1462.99
05/30/08	68639	Payment CK 2660 \$5259.68	-405.00
05/30/08	68791	Payment CK 2660 \$5259.68	-1227.81
05/30/08	68855	Payment CK 2660 \$5259.68	-203.98
05/30/08	71204	Payment CK 2660 \$5259.68	-41.82
05/30/08	71295	Payment CK 2660 \$5259.68	-162.91
05/30/08	71296	Payment CK 2660 \$5259.68	-404.59
05/30/08	82911	Payment CK 2660 \$5259.68	-95.11
05/30/08	000215 87546	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #RUL RED ULTRA LOW 9.7 gals @ 4.7880 PBT (HS) LUST State Excise Tax State Sales Tax	46.44 1.42 1.91 0.78 0.85 51.40

ASHBY FUEL OIL CORP.  
99 Beechwood Ave  
New Rochelle NY 10801

PHONE: (914)576-0009

DATE: 01/18/2010

ASHBY FUEL OIL CORP.  
CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

BYRAM READY MIX  
56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603-

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 11

DATE	INV #	CHARGES AND CREDITS	AMOUNT
02/28/08	78866	Payment CK 2147 \$39031.73	-315.30
02/28/08	79461	#CUL CLEAR ULTRA LOW 895.7 gals @ 3.3750	3022.99
		PBT (LS)	131.22
		Fed Excise Tax	218.55
		LUST	134.91
		State Excise Tax	71.66
			-----
			3579.33
02/28/08	85119	Payment CK 2147 \$39031.73	-157.58
02/28/08	85288	Payment CK 2147 \$39031.73	-116.79
02/28/08	85468	Payment CK 2147 \$39031.73	-159.51
02/28/08	99659	Payment CK 2147 \$39031.73	-7670.54
02/28/08	99735	Payment CK 2147 \$39031.73	-198.96
02/28/08	193127	Payment CK 2147 \$39031.73	-8777.78
02/28/08	194168	Payment CK 2147 \$39031.73	-11720.52
02/28/08	194249	Payment CK 2147 \$39031.73	-7019.31
02/29/08	6686	Late Pay Charge	576.13
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
02/29/08	79903	#RUL RED ULTRA LOW 38.7 gals @ 4.0240	155.73
		PBT (HS)	5.67
		LUST	6.46
		State Excise Tax	3.10
		State Sales Tax	3.39
			-----
			174.35
02/29/08	79904	#2C HGT OIL COMM 158.9 gals @ 3.1070	493.70
		PBT (Htg Comm)	7.63
		State Sales Tax(Com)	20.05
		State Sales Tax	13.90
			-----
			535.28

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CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

BYRAM READY MIX  
56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603-

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 27

DATE	INV #	CHARGES AND CREDITS	AMOUNT
06/20/08	6686	Payment CK 2763 \$10266.23	-576.13
06/20/08	75284	Payment CK 2763 \$10266.23	-2187.20
06/20/08	75469	Payment CK 2763 \$10266.23	-375.59
06/20/08	79385	Payment CK 2763 \$10266.23	-121.71
06/20/08	79386	Payment CK 2763 \$10266.23	-382.42
06/20/08	79429	Payment CK 2763 \$10266.23	-206.40
06/20/08	79461	Payment CK 2763 \$10266.23	-3579.33
06/20/08	79592	Payment CK 2763 \$10266.23	-98.72
06/20/08	79593	Payment CK 2763 \$10266.23	-1018.50
06/20/08	79903	Payment CK 2763 \$10266.23	-174.35
06/20/08	79904	Payment CK 2763 \$10266.23	-535.28
06/20/08	79908	Payment CK 2763 \$10266.23	-1010.60
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
06/23/08	87521	#RUL RED ULTRA LOW 67.0 gals @ 4.7420	317.71
		PBT (HS)	9.82
		LUST	13.10
		State Excise Tax	5.36
		State Sales Tax	5.86
			351.85
06/27/08	70011	Payment CK 2808 \$2111.33	-37.18
06/27/08	70099	Payment CK 2808 \$2111.33	-35.00
06/27/08	72116	Payment CK 2808 \$3255.81	-121.96
06/27/08	72119	Payment CK 2808 \$2111.33	-1045.89
06/27/08	72166	Payment CK 2808 \$3255.81	-236.07
06/27/08	72295	Payment CK 2808 \$3255.81	-83.57

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CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

BYRAM READY MIX  
56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603-

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 17

DATE	INV #	CHARGES AND CREDITS	AMOUNT
03/27/08	193216	Payment CK ck#2386 \$20651.93	-1597.98
03/31/08	6723	Late Pay Charge	603.64 ✓
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
04/02/08	197226	#RUL RED ULTRA LOW 131.6 gals @ 4.1110	541.01
		PBT (HS)	19.28
		LUST	22.41
		State Excise Tax	10.53
		State Sales Tax	11.52
			604.75
04/03/08	75030	#CUL CLEAR ULTRA LOW 400.0 gals @ 3.6250	1450.00
		PBT (LS)	58.60
		Fed Excise Tax	97.60
		LUST	64.25
		State Excise Tax	32.00
		State Sales Tax	35.00
			1737.45
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
04/07/08	70780	#RUL RED ULTRA LOW 127.5 gals @ 4.2290	539.20
		PBT (HS)	18.68
		LUST	22.32
		State Excise Tax	10.20
		State Sales Tax	11.16
			601.56

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CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

BYRAM READY MIX  
56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603-

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 28

DATE	INV #	CHARGES AND CREDITS	AMOUNT
06/27/08	72297	Payment CK 2808 \$3255.81	-12.29
06/27/08	72404	Payment CK 2808 \$3255.81	-2055.82
06/27/08	72602	Payment CK 2808 \$2111.33	-206.14
06/27/08	72604	Payment CK 2808 \$2111.33	-140.84
06/27/08	72694	Payment CK 2808 \$2111.33	-249.64
06/27/08	72843	Payment CK 2808 \$2111.33	-396.64
06/27/08	79998	Payment CK 2808 \$3255.81	-441.62
06/27/08	79999	Payment CK 2808 \$3255.81	-304.48
06/30/08	6834	Late Pay Charge	699.36
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
07/02/08	67517	#RUL RED ULTRA LOW 70.3 gals @ 4.8790	342.99
		PBT (HS)	10.30
		LUST	14.13
		State Excise Tax	5.62
		State Sales Tax	6.15
			379.19
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
07/08/08	67865	#RUL RED ULTRA LOW 57.2 gals @ 4.8990	280.22
		PBT (HS)	8.38
		LUST	11.54
		State Excise Tax	4.58
		State Sales Tax	5.01
			309.73
07/11/08	6723	Payment CK 2842 \$4679.47	-608.64



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CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

BYRAM READY MIX  
56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603-

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 37

DATE	INV #	CHARGES AND CREDITS	AMOUNT
10/14/08	6834	Payment CK 3293 \$2608.65	699.36 ✓
10/14/08	67517	Payment CK 3293 \$2608.65	-379.19
10/14/08	69175	Payment CK 3293 \$2608.65	-184.58
10/14/08	74152	Payment CK 3293 \$2608.65	-23.05
10/14/08	76664	Payment CK 3293 \$2608.65	-463.39
10/14/08	87184	Payment CK 3293 \$2608.65	-331.63
10/14/08	87521	Payment CK 3293 \$2608.65	-351.85
10/14/08	199005	Payment CK 3293 \$2608.65	-70.30
10/14/08	199401	Payment CK 3293 \$2608.65	-105.30
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
10/15/08	90798	#RUL RED ULTRA LOW 62.2 gals @ 3.5900	223.30
		PBT (HS)	9.11
		LUST	9.30
		State Excise Tax	4.98
		State Sales Tax	5.44
			252.13
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
10/15/08	90802	#CUL CLEAR ULTRA LOW 62.7 gals @ 3.5800	224.47
		PBT (LS)	9.19
		Fed Excise Tax	15.30
		LUST	9.96
		State Excise Tax	5.02
		State Sales Tax	5.49
			269.43

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DATE: 01/19/2010

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CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

BYRAM READY MIX  
56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603-

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 1

DATE	INV #	CHARGES AND CREDITS	AMOUNT
		Balance Forward	51164.71
05/31/08	6793	Late Pay Charge <i>PAID 2/5/08</i>	826.53 ✓
		Total Late Pay \$	826.53
		Current Bal. \$	51991.24

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DATE: 01/18/2010

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CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

BYRAM READY MIX  
56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603--

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 33

DATE	INV #	CHARGES AND CREDITS	AMOUNT
09/05/08	6793	Payment CK 3130 \$986.39	826.53 ✓
	000215	--E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
09/05/08	69971	#RUL RED ULTRA LOW 58.0 gals @ 4.2360	245.69
		PBT (HS)	8.50
		LUST	10.17
		State Excise Tax	4.64
		State Sales Tax	5.08
			274.08
09/05/08	87407	Payment CK 3130 \$986.39	-108.46
09/05/08	87546	Payment CK 3130 \$986.39	-51.40
	000215	--E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
09/09/08	89030	#RUL RED ULTRA LOW 47.0 gals @ 4.1840	196.65
		PBT (HS)	6.89
		LUST	8.14
		State Excise Tax	3.76
		State Sales Tax	4.11
			219.55
	000215	--E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
09/16/08	89497	#CUL CLEAR ULTRA LOW 29.6 gals @ 4.0840	120.89
		PBT (LS)	4.34
		Fed Excise Tax	7.22
		LUST	5.30
		State Excise Tax	2.37
		State Sales Tax	2.59
			142.71

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DATE: 01/18/2010

ASHBY FUEL OIL CORP.  
CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

BYRAM READY MIX  
56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603--

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 20

DATE	INV #	CHARGES AND CREDITS	AMOUNT
04/25/08	000215 73219	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #RUL RED ULTRA LOW 10.8 gals @ 4.3850 PBT (HS) LUST State Excise Tax State Sales Tax	47.36 1.58 1.96 0.86 0.95 52.71
04/28/08	000215 73108	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #RUL RED ULTRA LOW 88.5 gals @ 4.4090 PBT (HS) LUST State Excise Tax State Sales Tax	390.20 12.97 16.13 7.08 7.74 434.12
04/29/08	000215 73346	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #RUL RED ULTRA LOW 1.7 gals @ 4.4240 PBT (HS) LUST State Excise Tax State Sales Tax	7.52 0.25 0.31 0.14 0.15 8.37
04/30/08	6756	Late Pay Charge	754.34
05/01/08	25264	Payment CK 2565 \$7365.76	-1588.37

PA 7/31/08 ✓

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DATE: 01/18/2010

ASHBY FUEL OIL CORP.  
CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

BYRAM READY MIX  
56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603-

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 30

DATE	INV #	CHARGES AND CREDITS	AMOUNT
07/18/08	197226	Payment CK 2884 \$2342.20	-604.75
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
07/28/08	83409	#RUL RED ULTRA LOW 65.4 gals @ 4.4960	294.04
		PBT (HS)	9.58
		LUST	12.14
		State Excise Tax	5.23
		State Sales Tax	5.72
			326.71
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
07/29/08	83515	#RUL RED ULTRA LOW 70.8 gals @ 4.5110	319.38
		PBT (HS)	10.37
		LUST	13.19
		State Excise Tax	5.66
		State Sales Tax	6.20
			354.80
07/31/08	<del>6756</del>	<del>Payment CK 2977 \$5536.10</del>	<del>-754.34</del>
07/31/08	6883	Late Pay Charge	293.89
07/31/08	36998	Payment CK 2977 \$5536.10	-259.99
07/31/08	72692	Payment CK 2977 \$641.06	-315.09
07/31/08	73108	Payment CK 2977 \$5536.10	-434.12
07/31/08	73172	Payment CK 2977 \$5536.10	-3901.99
07/31/08	73219	Payment CK 2977 \$5536.10	-52.71
07/31/08	73346	Payment CK 2977 \$5536.10	-8.37
07/31/08	77118	Payment CK 2977 \$5536.10	-124.58

10 10/27/08 ✓

ASHBY FUEL OIL CORP.  
99 Beechwood Ave  
New Rochelle NY 10801

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ASHBY FUEL OIL CORP.  
CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

BYRAM READY MIX  
56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603-

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 38

DATE	INV #	CHARGES AND CREDITS	AMOUNT
10/16/08	000215 6794	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #RUL RED ULTRA LOW 112.9 gals @ 3.5210 PBT (HS) LUST State Excise Tax State Sales Tax	397.52 16.54 16.56 9.03 9.88 449.53
10/20/08	000215 6932	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #RUL RED ULTRA LOW 28.5 gals @ 3.3960 PBT (HS) LUST State Excise Tax State Sales Tax	96.79 4.18 4.04 2.28 2.49 109.78
10/23/08	000215 7168	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #RUL RED ULTRA LOW 26.4 gals @ 3.2900 PBT (HS) LUST State Excise Tax State Sales Tax	86.86 3.87 3.63 2.11 2.31 98.78
10/27/08	6883	Payment CK 3369 \$3519.50	293.89
10/27/08	000215 7323	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #RUL RED ULTRA LOW 90.1 gals @ 3.1960 PBT (HS) LUST State Excise Tax State Sales Tax	287.96 13.20 12.05 7.21 7.88 328.30

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CLIENT ACTIVITY REPORT

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56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603-

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

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DATE	INV #	CHARGES AND CREDITS	AMOUNT
09/24/08	000215 90004	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #CUL CLEAR ULTRA LOW 4.3 gals @ 4.1860 PBT (LS) Fed Excise Tax LUST State Excise Tax	18.00 0.63 1.05 0.79 0.34 20.81
09/29/08	000215 89363	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #RUL RED ULTRA LOW 34.6 gals @ 4.2160 PBT (HS) LUST State Excise Tax State Sales Tax	145.87 5.07 6.04 2.77 3.03 162.78
09/30/08	7002	Late Pay Charge	90.54
10/02/08	000215 89731	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK #CUL CLEAR ULTRA LOW 73.0 gals @ 4.0640 PBT (LS) Fed Excise Tax LUST State Excise Tax State Sales Tax	296.67 10.69 17.81 13.01 5.84 6.39 350.41

ASHBY FUEL OIL CORP.  
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DATE: 01/18/2010

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CLIENT ACTIVITY REPORT

ACCOUNT NUMBER: 000215

BYRAM READY MIX  
56 LAFAYETTE AVENUE  
SUITE 310  
WHITE PLAINS, NY 10603-

RE: BYRAM READY MIX  
@@@MACQUESTION PARKWAY@@@, MT.VERNON

PAGE : 40

DATE	INV #	CHARGES AND CREDITS	AMOUNT
<del>11/04/08</del>	<del>7002</del>	<del>Payment CK 3394 \$1078.13</del>	<del>90.54</del>
11/04/08	80504	Payment CK 3394 \$1078.13	-426.59
11/04/08	89363	Payment CK 3394 \$1078.13	-162.78
11/04/08	89838	Payment CK 3394 \$1078.13	-377.41
11/04/08	90004	Payment CK 3394 \$1078.13	-20.81
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
11/06/08	8047	#RUL RED ULTRA LOW 55.0 gals @ 3.2270	177.49
		PBT (HS)	8.06
		LUST	7.42
		State Excise Tax	4.40
		State Sales Tax	4.81
			202.18
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
11/10/08	8250	#RUL RED ULTRA LOW 81.7 gals @ 3.1420	256.70
		PBT (HS)	11.97
		LUST	10.75
		State Excise Tax	6.54
		State Sales Tax	7.15
			293.11
	000215	-E BYRAM READY MI EDISON AVE JOB @ PETRILLO DOCK	
11/13/08	14376	#RUL RED ULTRA LOW 107.1 gals @ 3.0260	324.08
		PBT (HS)	15.69
		LUST	13.59
		State Excise Tax	8.57
		State Sales Tax	9.37
			371.30



**AFFIDAVIT OF SERVICE**

State of New York        }  
County of Westchester } ss.:

Geraldine Yacko, being sworn says: I am not a party to the action, am over 18 years of age and reside at Yonkers, New York. On January 20, 2010, I served a true copy of the annexed Affidavit in Opposition in the following manner:

\_\_\_\_\_ by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

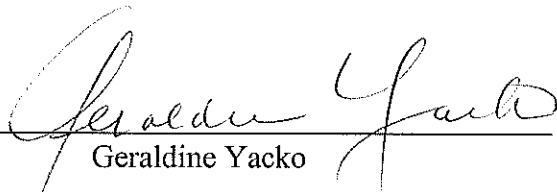
\_\_\_\_\_ by delivering the same personally to the persons and at the addresses indicated below:

\_\_\_\_\_ by transmitting the same to the attorney by electronic means to the telephone number or other station or other limitation designated by the attorney for that purpose. In doing so I received a signal from the equipment of the attorney indicating that the transmission was received, and mailed a copy of same to that attorney, in a sealed envelope, with postage paid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

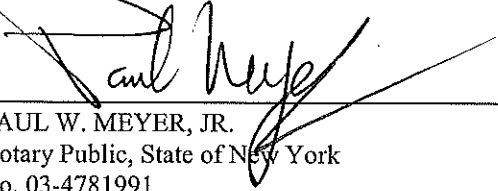
X by depositing the same with an overnight delivery service in a wrapper properly addressed to the attorney to the address designated by the attorney for that purpose or, if none were designated, to the attorney's last known address. Said deposit was made prior to the latest time designated by the overnight delivery provider for pick-up and delivery on said date.

ERICA FEYNMAN, ESQ.  
RATTET, PASTERNAK & GORDON- OLIVER, LLP  
Attorneys for Debtor  
550 Mamaroneck Avenue  
Harrison, New York 10528

GREG ZIPES, ESQ.  
Office of U. S. Trustee  
33 Whitehall Street  
New York, New York 10004

  
\_\_\_\_\_  
Geraldine Yacko

Sworn to before me  
on January 20, 2010

  
\_\_\_\_\_  
PAUL W. MEYER, JR.  
Notary Public, State of New York  
No. 03-4781991  
Qualified in Bronx County  
Term Expires September 30, 2013

Chapter 11  
Lead Case No. 09-22037 (ASH)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

**BYRAM CONCRETE & SUPPLY, INC.**

Debtor.

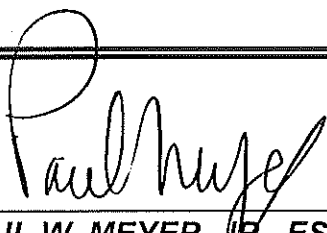
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**AFFIDAVIT IN OPPOSITION**

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\_\_\_\_\_  
**PAUL W. MEYER, JR., ESQ.**  
**Attorney for ASHBY FUEL OIL CORP.**  
**35 East Grassy Sprain Road**  
**Yonkers, New York 10710**  
**(914) 961-3000**

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**PLEASE TAKE NOTICE**

Notice of Entry

/ / that the within is a (certified) true copy of an entered in the Office of the Clerk  
of the within named Court on

Notice of Settlement

/ / that the of which the within is a true copy will be presented for  
settlement to one of the judges of the within named Court,

**PAUL W. MEYER, JR., ESQ.**  
**Attorney for ASHBY FUEL OIL CORP.**  
**35 East Grassy Sprain Road**  
**Yonkers, New York 10710**  
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